

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

DONALD P. SPEAKMAN, STEPHEN H.
WEDEL and MARK L. ROBARE,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs and Counterclaim
Defendants,

v.

Civil Action No. 4:04-CV-40077-FDS

ALLMERICA FINANCIAL LIFE INS. &
ANNUITY CO., FIRST ALLMERICA
FINANCIAL LIFE INS. CO., and
ALLMERICA FINANCIAL CORP.,

Defendants and Counterclaim
Plaintiffs.

**JOINT MOTION TO CONTINUE HEARING
ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Plaintiffs and Defendants make this Joint Motion to Continue the Hearing on Plaintiffs' Motion to Compel Discovery and state the following grounds in support of the Motion:

1. On October 27, 2005, Plaintiffs filed a Motion to Compel Discovery in connection with certain discovery disputes with Defendants.
2. On November 30, prior to the hearing on Plaintiffs' Motion to Compel Discovery, the parties reached a compromise as to certain of the issues raised by the Motion to Compel. On December 8, 2005, Magistrate Judge Swartwood held a hearing on the Motion to Compel at which, among other things, the parties indicated that the discovery issues concerning that part of the Motion to Compel regarding class certification issues had been resolved. Magistrate Judge

Swartwood requested that the parties file a stipulation reflecting that fact, which was filed on December 12. Magistrate Judge Swartwood continued the hearing on the unresolved matters involved in the Motion until December 28, and ordered the parties to file discovery statements by December 21 regarding any outstanding issues in the Motion to Compel with an explanation of their respective positions on such issues. At the request of the parties, Magistrate Judge Swartwood continued the hearing until January 13, 2006 with the discovery statements to be filed by January 6.

3. On December 14, this Court held a hearing on Plaintiffs' Motion for Class Certification and took the matter under advisement. This motion is now pending.

4. The Court's ruling on the pending Motion for Class Certification may materially affect the form of the pleadings and the scope and pace of discovery. If the Court certifies a class, the Court's certification order may impact the issues that will be in dispute. Conversely, if the Court does not certify a class, then the procedural posture of the case will change with a concomitant effect on the claims that may be pursued and the discovery to be undertaken.

5. Similarly, the Court's ruling on the pending Motion for Class Certification may materially affect the resolution of any remaining issues left to be decided in the Motion to Compel.

6. Concurrently, with this Motion, Plaintiffs and Defendants have filed a Joint Motion to Modify Scheduling Order, in which they have requested the court to suspend the dates set forth in the Scheduling Order and conduct a status conference after it rules on the Motion for Class Certification at which time new deadlines would be set.

WHEREFORE, Plaintiffs and Defendants respectfully pray this Court (i) vacate the filing of discovery statements on January 6, (ii) continue the hearing on Plaintiffs' Motion to Compel that is scheduled on January 13, and (iii) conduct a status conference following the Court's ruling on the Motion for Class Certification to determine in light of that ruling whether there are any outstanding issues in connection with Plaintiffs' Motion to Compel Discovery.

Dated: January 6, 2006.

Respectfully submitted,

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